REMARKS

Claims 2-20, 22-24, 26, 34, 36, 68 and 70 and 71 are pending in the application.

Claims 2-20, 22-24, 26, 34, 36 and 68 stand rejected under the judicially created doctrine of obviousness - type double patenting as being unpatentable over claims 1-27 of U.S. Patent No. 6 177 101.

Claims 2-20, 22-24, 26, 34, 36-38, 68 and 70-71 stand rejected under 35 USC 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 2-20, 22-24, 26, 34, 36 and 68 stand rejected under 35 USC 103 (a) as being unpatentable over Makooi-Morehead et al, U.S. Patent 6 238 695, in view of Elger et al, U.S. Patent 4 844 907.

Claims 70-71 stand objected to as being dependent upon a rejected base claim and have been indicated to be allowable if written in independent form including all limitations of the base claim and any intervening claims.

Claim 69 is being cancelled and claim 71 is being amended by the amendment contained in this response.

THE REJECTION OF CLAIMS 2-20, 22-24, 26, 34, 36 AND 68 UNDER THE JUDICIALLY CREATED DOCTRINE OF OBVIOUSNESS - TYPE DOUBLE PATENTING

A terminal disclaimer that is in compliance with 37 CFR 1.321(c) is filed herewith and made a part of this response. Hence, this rejection is deemed no longer applicable.

THE REJECTION OF CLAIMS 2-20, 22-24, 26, 34, 36-38, 68, 70 AND 71 UNDER 35 USC 112, SECOND PARAGRAPH

Claim 71 has been amended by deleting the recitation "fairly soluble or highly soluble" therefrom. The rapid precipitating drug in the claim is now defined as a salt form

of a poorly soluble free base". This language is supported on page 3, lines 10-14 wherein it is disclosed:

> "A rapidly precipitating drug is a pharmaceutical compound, or its salt form which when introduced in water, or simulated physiologically fluids at body temperature begins to dissolve fairly rapidly and then begins to rapidly polyurated out of solution within 60 minutes to 9 less soluble form which proves a concentration is less than therapeutic."

Hence the amendment does not introduce new matter into the application.

The rejection under 35 USC 112, second paragraph is deemed no longer applicable.

THE REJECTION OF CLAIMS 2-20, 22-24, 26, 34, 36 AND 68 UNDER 35 USC 103(a) AS BEING UNPATENTABLE OVER MAKOOI-MOREHEAD ET AL (US PATENT 6 238 695) IN VIEW OF ELGER ET AL (US PATENT 4 844 907)

Claims 2-20, 22-24, 26, 34 and 36 have been amended so that they are now dependent from claim 71. Claim 71 has been rewritten in independent form, and as such is deemed allowable by the Examiner. Since claims 2-20, 22-24, 26, 34 and 36 are now dependent from claim 71 they are also allowable.

Claim 68 has been cancelled, so the question of the propriety of the rejection of it is now moot.

THE OBJECTION TO CLAIMS 70 AND 71 AS BEING DEPENDENT ON A REJECTED BASE CLAIM

Claim 71, as amended, is deemed allowable as set forth above in the discussion of the rejections under (1) the judicially created doctrine of obvious-type double patenting and (2) 35 USC 112, second paragraph. Therefore the objection to claims 70 and 71 is deemed no longer applicable.

In view of the above discussed amendments and the filing of the terminal disclaimer, withdrawal of the rejections/objections and expeditious passage of the application to issue is respectfully solicited.

Respectfully submitted,

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Encl: Terminal Disclaimer
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136.07/05